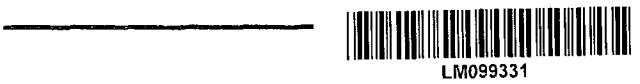
REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES



Status Of GAO's Responsibilities Under The Federal Reports Act

Independent Federal Regulatory Agencies

GAO, under its Federal Reports Act responsibilities, has had limited success in affecting the paperwork requirements placed on the public by the independent Federal regulatory agencies. This limited success is due to

--poor performance by some of the regulatory agencies in developing and executing their information-gathering activities,

--ambiguities in GAO's clearance responsibility and authority, and

--inadequate attention in legislation to the paperwork burden imposed by the Federal Government.

GAO suggests that the regulatory agencies assume more direct responsibility for reducing burdensome and duplicative paperwork requirements. Further, GAO recommends that the Congress change GAO's responsibilities under the Federal Reports Act.

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MAY 28, 1976

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the status of GAO's responsibilities under the Federal Reports Act. It is one of a series of GAO reports to be issued on the performance of the independent Federal regulatory agencies in their information-gathering activities.

This report illustrates that we have had limited success in stemming the paperwork requirements being placed on the public by the regulatory agencies. It discusses the basic reasons for this limited success and suggests corrective actions needed by the Congress and the regulatory agencies to ease the Federal paperwork problem.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), the Accounting and Auditing Act of 1950 (31 U.S.C. 67), and the Federal Reports Act of 1942 (44 U.S.C. 3512).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the heads of the 13 independent Federal regulatory agencies responsible to GAO under the Federal Reports Act.

Elmer B. Staats

Comptroller General
of the United States

Enclosure

Contents

ABBREVIATIONS

CFTC	Commodity Futures Trading Commission
GAO	General Accounting Office
NRC	Nuclear Regulatory Commission
OMB	Office of Management and Budget
SEC	Securities and Exchange Commission

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

STATUS OF GAO'S RESPONSIBILITIES UNDER THE FEDERAL REPORTS ACT Independent Federal Regulatory Agencies

D I G E S T

On November 16, 1973, the Congress amended the Federal Reports Act of 1942 and assigned to GAO, with reduced authority, certain review responsibilities relating to the information-gathering activities of independent Federal regulatory agencies. Previously the Office of Management and Budget had these responsibilities.

The Office of Management and Budget still has these responsibilities for all other agencies subject to the act. GAO has 45 days to make advance clearance reviews of the information-collection plans and forms which the regulatory agencies propose, to insure that

--information is obtained with a minimum burden on respondents and

--unnecessary duplication of information collection among Federal agencies is eliminated.

GAO has had limited success in affecting the paperwork burden placed on the public by the independent Federal regulatory agencies.

Factors contributing to GAO's limited success are:

--Poor performance by the regulatory agencies in developing and executing their information-gathering activities. (See p. 5.)

--Ambiguities in GAO's forms clearance authority. (See p. 14.)

--Inadequate attention in legislation to the paperwork burden imposed by the Federal Government.

AGENCY PERFORMANCE

The regulatory agencies must assume more direct responsibility for reducing

respondent burden and duplication. GAO suggests that each independent Federal regulatory agency reassess its information-collection procedures and practices to prevent the recurrence of certain problems. For example:

1. Sometimes the comments of potential respondents are either not solicited or are not fully considered before the proposed plans and forms are sent to GAO for clearance. (See p. 6.)

2. Little attention is given to the burden new requirements will impose on respondents. (See p. 8.)

3. Federal agencies do not always share data already available nor coordinate information-gathering efforts so that they will be useful to other agencies. (See p. 9.)

4. Some agencies do not periodically reexamine their need for existing plans and forms and insure that new plans and forms are submitted promptly to GAO for clearance. (See p. 13.)

Some regulatory agencies appear to operate as though:

1. The need for information automatically overrides any burden on respondents in providing that information.

2. Information obtained directly from respondents is better than using data from existing reports made to other agencies.

3. Information gathering in cooperation with other agencies is too burdensome and time consuming.

Respondents also add to the difficulties by fighting reporting requirements rather than working with regulatory agencies to achieve a constructive solution.

In addition to asking the regulatory agencies to take corrective actions, GAO is clarifying and strengthening its clearance regulations.

AMBIGUITIES IN CLEARANCE AUTHORITY

The authority the Congress gave GAO is narrow and subject to varying interpretations.

--Although GAO must determine within 45 days whether the information requested is available from another source and whether the burden on respondents has been minimized, the agency makes the final determination of the need for the information and whether to collect it. Since the issues of "need" and "burden" are integrally related, the extent of GAO's authority to withhold clearance of an information-collection plan is unclear. (See p. 14.)

--The Securities and Exchange Commission and the Commodity Futures Trading Commission have refused to submit most of their forms to GAO for clearance because they believe the law does not give GAO clearance jurisdiction over "forms adopted in the performance of regulatory duties." GAO disagrees with this position and is currently working with these agencies to resolve the issue. (See p. 15.)

--Two congressional subcommittee chairmen suggest that GAO has the authority and duty to insure that information collected by regulatory agencies is made available, to the maximum extent possible, to the public. Further, they suggest that GAO withhold clearance of information-gathering proposals that do not meet standards for confidentiality. GAO believes the law does not give it such authority. Nevertheless, GAO is currently formulating an approach to give advice to regulatory agencies on use of confidentiality provisions. (See p. 16.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

GAO has commented on several bills designed to give it more responsibilities in clearing the information-collection proposals of the Federal agencies. GAO continues to maintain that the clearance of information proposals involves GAO in the day-to-day

performance of executive activities in a manner inconsistent with GAO's responsibility for oversight and monitoring of such activities.

GAO ~~believes that it~~ could do more to help reduce the Federal paperwork burden if the Congress would free it from the clearance responsibilities of the information-collection plans of the regulatory agencies. GAO's limited resources could be used more productively for auditing the information-gathering practices and procedures of all Federal agencies.

GAO ~~recommends that the~~ Congress consider reassigning GAO's responsibilities for information clearance to an executive agency responsible for the entire clearance function, preferably the Office of Management and Budget.

In any event, the role of the agency responsible for clearance of regulatory reports should be clarified if that agency is to function effectively. The Congress, in enacting section 409 of Public Law 93-153, subjected regulatory agencies to less stringent clearance rules than other Federal agencies. Options for the Congress to consider in changing the law range from returning the clearance function to the Office of Management and Budget with the Office of Management and Budget's full powers under the Federal Reports Act, to exempting independent regulatory agencies from the Federal Reports Act.

GAO believes there is a need for greater controls over information-gathering activities of the regulatory agencies and recommends that the Congress consider

--returning the clearance function to the Office of Management and Budget with the Office of Management and Budget's present authority or

--clarifying and strengthening the legislation to allow the clearance agency to challenge the need for information. Four

options are discussed in detail in appendix I including suggested legislative language to implement each option.

AGENCY COMMENTS

Each of the 13 independent Federal regulatory agencies subject to GAO's information-collection reviews was given an opportunity to comment on this report. The comments of the six agencies which responded in writing are included as appendixes. Four of these agencies agreed with GAO's conclusions, but two disagreed. The Nuclear Regulatory Commission believed GAO's findings did not apply to it, and the Commodity Futures Trading Commission believed GAO's legislative recommendations would erode the Commission's independence. (See apps. V and VI.)

We recognize our ultimate responsibility for determining duplication and respondent burden but believe that each agency must, as a matter of general good management, assume initial direct responsibility for planning its information-collection activities. Careful attention to this objective will be to the advantage of the agencies both in obtaining prompt clearances and in obtaining quality and utility from its collected information.

From November 1973 through June 30, 1975, we made 273 clearance reviews, involving 113 new forms, 61 changes to existing forms, and 99 extensions to the collection period of existing forms.

The observations in this report are based on clearance reviews of the most controversial new proposals submitted to us during fiscal year 1975. New proposals are considered controversial if they elicited numerous, substantive complaints during GAO clearance reviews. The agencies and number of requests for new clearances and those considered by us to be controversial follow.

Agency	FY 1975 new submissions	Controversial submissions
Civil Aeronautics Board	0	0
Commodity Futures Trading Commission	0	0
Consumer Product Safety Commission	5	1
Equal Employment Opportunity Commission	1	1
Federal Communications Commission	7	0
Federal Energy Administration	26	8
Federal Maritime Commission	2	1
Federal Power Commission	3	1
Federal Trade Commission	14	5
Interstate Commerce Commission	3	1
National Labor Relations Board	0	0
Nuclear Regulatory Commission	9	0
Securities and Exchange Commission	1	0
Total	71	18

GAO's other responsibilities under the Federal Reports Act require it to undertake general studies of the existing

information-gathering practices of the regulatory agencies. Studies are now in process at several regulatory agencies. Through these studies and others to be scheduled, we hope to contribute toward improving the Government's information-gathering processes.

CHAPTER 1

INTRODUCTION

This report presents our observations on how the independent Federal regulatory agencies (see app. VIII) carry out their information-gathering activities and the limitations on GAO's ability to improve Federal paperwork problems under the existing legislation. The report is not intended to critique the practices of individual agencies. We will do that at a later time.

LEGISLATIVE HISTORY

Public Law 93-153, enacted on November 16, 1973, amended the Federal Reports Act of 1942 and assigned us certain review functions for information-gathering activities of independent Federal regulatory agencies. Specifically, we are required to conduct advance clearance reviews of new information-collection plans and forms proposed by these agencies prior to their use. We are also mandated to study existing information-gathering practices of regulatory agencies.

Before we received this new responsibility, the Office of Management and Budget (OMB) had sole responsibility for performing clearance reviews for Federal agencies within the scope of the Federal Reports Act. Except for those independent Federal regulatory agencies under our jurisdiction, OMB retains this responsibility. However, there are differences between the authority granted to OMB under the Federal Reports Act and to us under the 1973 legislation. For instance:

--OMB may withhold approval of a proposal if it determines that an agency does not need the information to properly perform its functions, whereas we cannot do so.

--OMB has no time limit for its clearance reviews, while we have 45 days in which to complete our reviews.

--OMB may designate a single collecting agency if it believes that the information needs of two or more agencies can be adequately served by a single collecting agency. We have no such authority.

The 1973 statute primarily assures that agencies obtain information with a minimum burden on respondents and that they avoid unnecessary duplication of information collection. The statute goes on to state that while we

shall determine the availability of information sought from existing Federal sources and the appropriateness of the collection plans and forms, the agencies shall make the final determination as to the necessity for the information in carrying out their responsibilities and whether to collect the information.

IMPLEMENTATION OF THE ACT

As noted, the statute assigns us responsibility for determining questions of duplication and excessive burdensomeness, but specifically reserves to the agencies the final determination as to their need for information. We interpret this to mean that our clearance reviews should concentrate on procedural rather than substantive matters. However, separating these matters in actual cases is often difficult. For example, information sought by one agency may already be available from another Federal source although in somewhat different form or content. We might in such circumstances conclude that the agency should forego an additional collection. However, the agency might respond that the alternate source does not satisfy its particular need. Furthermore, the statute condemns only unnecessary duplication. Thus, the criterion of excessive or unreasonable compliance burden is even more ambiguous since presumably respondent burden relates to an agency's substantive needs.

Another limiting provision of the statute pertains to the requirement that our reviews be completed within 45 days. To have a basis for evaluating those proposals submitted for clearance, GAO publishes notices in the Federal Register to solicit comments from potential respondents and other interested parties. This process, from time of submission through publication in the Federal Register and receipt of the comments, consumes over one-half of the 45-day cycle. This in turn has created a problem in resolving differences between the agency's position and that of the respondents. While some limited contribution can be made by us in a 45-day period, a wide disagreement between the proposing agency and the potential respondents cannot be adequately resolved.

Consequently, we have attempted to insure that each agency submit a proposal for clearance only after taking all reasonable steps on its own to comply with the Federal Reports Act. This includes efforts to ascertain and avoid potential duplication and to minimize compliance burdens. GAO regulations stress that such efforts also include, to the maximum extent possible, direct consultations with respondents and other parties who will be affected by the proposal.

CHAPTER 2

OBSERVATIONS ON AGENCY PERFORMANCE

In reviewing the information-gathering proposals of the regulatory agencies we assume that each agency must, as a matter of good management, take initial direct responsibility for planning, developing, and controlling its information-collection activities while complying with the Federal Reports Act. If such planning and followup is not done, reports of questionable value or with overly burdensome or duplicative requirements can enter and remain in the Federal information system.

Some typical actions an agency is expected to take before an information-gathering proposal is submitted to us for clearance are:

--Determining that the data (1) is needed to accomplish a specific agency function and (2) will actually serve the agency's purpose.

--Soliciting and considering the comments of affected parties.

--Searching other Federal sources for usable data already being obtained or to be obtained that might be modified to serve the additional purposes.

--Assessing the impact--financial or otherwise--on businesses or persons who must provide the data so that the value of the data requested can be weighed against the cost of producing it.

--Periodically examining the data-gathering process to reassess its effectiveness.

These actions should improve the quality of agencies' information requests, as well as facilitate clearance decisions on individual proposals. All too often, however, these actions have not been performed by the time a request for clearance is made to us.

Serious problems exist in the manner in which the regulatory agencies conduct their information-gathering activities. The observations below are based primarily on our 45-day clearance reviews of new proposals to collect information. While we plan more extensive reports based on agency-by-agency studies of the information-gathering practices and procedures followed by regulatory agencies, certain persistent patterns deserve comment at this time.

1. Sometimes the comments of potential respondents are either not solicited or are not fully considered before new proposed forms are sent to us for clearance.

2. Little attention is given the burden new requirements will impose on respondents.

3. Federal agencies do not always share what data is already available in a given area nor coordinate their design of information-gathering activities so that they will be useful to other agencies.

Each of these problems is discussed in more detail below. The examples cited are not intended to point the finger at any one agency. Rather, they are used to illustrate problem areas.

SOLICITING AND CONSIDERING COMMENTS

Some independent Federal regulatory agencies are doing a poor job in soliciting and considering the comments of potential respondents and other interested parties before proposed forms are submitted to us for clearance. The primary reasons given for not adequately considering comments are (1) the agency was under tight time constraints to obtain the data or (2) it is contrary to agency policy to solicit and consider comments. However, if an agency fails to adequately solicit and consider comments on a proposed form, we are deluged with requests for copies of the form, with questions about the content of the form, and with comments complaining about the form. Even if it could be done in the time allowed, we are not responsible under the law to consider all of the comments or resolve all the problems raised by potential respondents and other interested parties. The sponsoring agency is responsible for considering, before submittal to us, such comments and should either resolve them or explain why they cannot be resolved.

Our rules and regulations for clearance of information-gathering proposals urge agencies to solicit and consider comments. They state that, before submitting proposals for clearance to us, each agency shall take all necessary and appropriate measures to insure to the best of its capabilities that proposed plans and report forms comply with the requirements of 44 U.S.C. 3512, including all reasonable efforts to solicit and consider the views of persons who would be affected by the proposed plan or report form (including respondents, business and trade associations, and other concerned organizations).

The following example illustrates the effect of not adequately soliciting or considering comments from interested parties. Early in 1975 an agency sent us a report form for clearance that requires 1,000 of the largest domestic manufacturing companies to file information on value of shipments by manufacturing product class. The proposed report would require the companies to submit data to the sponsoring agency similar to data that the companies were already providing to the Bureau of Census, Department of Commerce. Furthermore, while the Congress has prohibited the Bureau of Census from releasing this data on an individual company basis, the sponsoring agency intended to collect and publish the data on an individual company basis as public information. With regard to the sensitivity associated with releasing individual company data, the sponsoring agency hoped to reduce this sensitivity by delaying for several years the publication of the data.

We believed that this form would create much controversy. Despite the possible controversy and the potentially large number of respondents, the sponsoring agency restricted its consultations with respondents to a group of nine companies early in 1973. As a result, we received hundreds of inquiries about the proposed report and mailed over 200 copies of it to concerned companies. We also received about 80 written comments and were asked by numerous organizations to discuss problems particular to individual companies. We were placed in the untenable position of having to do in a few weeks what the agency should have done before submitting the form for clearance. The problems raised by respondents, while often important, were not germane to our clearance decision. In clearing the report form, we advised the agency that major unresolved issues remained which went beyond our forms clearance responsibilities.

After receiving our clearance, the agency held a hearing, open to the public, with several interested Federal agencies. As a result, some constructive changes to the report have been made. These changes resolved some of the issues raised by respondents.

Another example of this problem was a form designed to gather monthly data (retroactive to January 1972) on the volume of propane, distillate fuel oil, and residual fuel oil sales to ultimate consumers. This form was part of a monitoring system which responds to a requirement that any changes in the market shares of those engaged in marketing petroleum products be reported to the Congress on a monthly basis.

Although the agency consulted with various trade associations, the respondents (15,000) were not given an opportunity to submit comments during the development of the form. The agency did not publish a Federal Register Notice nor generally distribute the form for comment.

Following our Notice of Receipt of the form in the Federal Register, comments were received from numerous potential respondents and a Member of Congress. After numerous meetings and discussions with agency officials, the agency adopted many suggestions for improving definitions and instructions. However, because the agency had not solicited comments we were forced to deal with problems and issues that should have been dealt with before the form was submitted for approval.

BURDEN COMPUTATION

Good management practices dictate that, when an agency develops an information-gathering proposal, the cost and other burden to the respondents of providing the information should be weighed against the expected benefits. This is not done in most cases. Most agencies believe their need for the information automatically overrides the respondents' burden of providing that information. Further, agencies often put little thought into computing respondent burden and are, in any case, inclined to underestimate it.

The following examples illustrate this problem. An agency submitted for our clearance a one-time survey to obtain information on historical sales of refined petroleum products. The agency estimated that respondent burden on this form would range from 15 to 100 hours per respondent. The agency indicated that this estimate was based on industry comments as well as on experience with related questionnaires. Industry estimates 1/ of burden differed considerably from the agency's estimate, ranging from 1,000 to 3,600 hours.

Because of the great difference between agency and industry burden estimates, doubt arose as to the validity of the agency's estimate. An agency representative responsible for the form questioned our concern with a valid burden estimate. He argued if an agency states that it needs information, the issue of burden becomes moot. The agency later revised its estimated range of burden upward from 15 to 100 hours per respondent to 15 to

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1/Similar to agencies' underestimation of burden, respondents are likely to overestimate it.

1,800 hours. There is little evidence that much thought went into the agency's first estimate of burden, and not much more went into the development of the second.

In another case, we received a proposed form designed to collect extensive and detailed reserve information from all natural gas companies. The justification statement contained a burden estimate of 2 hours per respondent and was based on a trial run of filling out the form by experienced personnel on the sponsoring agency's staff. This estimate was also based on the assumption that the data was preassembled and that the companies' proved gas reserves estimates were current. The agency stated that if a company's estimates of reserves were not current, as many as 20 hours per field might be required. The agency's estimate of maximum total burden associated with the form was 120,000 hours.

Potential respondent comments we received indicated that the information was not readily available and that the form would be much more burdensome per company than the agency's estimate, particularly for small owners. Our consultants, hired to evaluate the agency and respondent positions, generally supported the respondents' contention.

Because of the wide disparity in burden estimates and a lack of evidence to show burden had been minimized, we withheld clearance of the form and recommended to the agency (1) that a statistically valid burden estimate be developed and (2) that it determine whether the total of 6,000 potential respondents could be reduced and still allow for a valid sample.

The form was approved when the agency made changes on the basis of its reconsideration of respondent burden and its needs. The changes included exempting certain gas producers from the reporting requirement and increasing the amount of reserves a respondent would have to own before being required to report on the most burdensome part of the form.

IDENTIFYING AND REDUCING DUPLICATION

Identifying and reducing duplicate reporting of information within the Federal Government is a key role in clearing the information-gathering proposals of the regulatory agencies. This is a difficult task, particularly in the energy area. Many agencies are collecting energy data, but they, too often, are doing a poor job in coordinating their efforts. Agencies are apparently reluctant to seek out and use existing sources of collected data or to design data collections that would be useful to other agencies.

A contributing factor to this problem is that agencies, to facilitate the collection of information, often pledge to hold the information confidential. Thus, information is not effectively exchanged. As a result, the same respondents are repeatedly asked to provide similar--but not quite the same--data to various Government agencies. While the respondents usually view this as unnecessary duplication, they are equally unwilling to have the data shared among agencies. The sponsoring agencies insist that, although the data requested is similar to information already provided, the similar data is either not available because of confidentiality restrictions or because it is not precisely duplicative of information already available.

The following example illustrates the tendency of agencies to develop their own forms rather than to work cooperatively toward designing forms of mutual benefit. In this example three agencies designated as Agency A, B, and C, within a short period requested clearance of forms designed to collect related energy reserve information. A fourth agency involved in collecting similar data is designated as Agency D.

(1) On October 10, 1974, Agency A submitted to us a reporting proposal which would require all known operators of oil and gas wells in 1974 to provide data which would result in a "complete and independent" analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf. This analysis was required by a legislative mandate which specified a June 1975 completion date.

Agency A in its justification to us stated, in part:

> "This survey is expected to obtain more complete coverage than proposed surveys of industry to obtain reserve and resource data estimates of crude oil and natural gas by [Agency B and Agency D]. [Agency B] on their proposed survey, plans to obtain gas data from 'natural gas companies' on an ownership basis, and [Agency D] has proposed to obtain reserve and resource data on Federal leases. However, timing is such that results of their proposals are not expected to be available for inclusion in a June 1975 report. An attempt to work out a joint form that would satisfy the needs of [Agency A and B] was discouraged because of ex parte legal constraints. Time constraints are such that continued delays in getting this survey under way will result in the failure to

have the data needed to prepare an analysis of oil and gas reserves at the appointed time."

(2) On January 14, 1975, Agency C submitted to us a reporting proposal to obtain information from 60 of the largest natural gas producers on natural gas reserves, production, and producible shut-in leases. The proposal also requested data concerning natural gas contracts. The data to be gathered was to be used by Agency C to carry out a public law to consider the effects of governmental department decisions on the price and supply of energy.

Agency C provided an extensive justification of why it could not use the data proposed to be collected by other Government agencies. Its justification made six basic points.

--Agency A and B proposed to gather data on gas reserves, but for several reasons the data requested by these agencies was not sufficient for the purposes of Agency C.

--Neither agency's (A's or B's) questionnaire was in final form. Thus, any data acquired would probably not be available in time for Agency C's target date for the study of January 1, 1976.

--Agency A's questionnaire asked for data by operator rather than by owner.

--Agency B's form was designed to collect reserve and production data for 1973 and it was designed to be an annual report. In contrast, Agency C's questionnaire asked for reserve and production data for 7 past years.

--There was no assurance that data to be collected by Agency B and placed in its nonpublic files would be available to Agency C.

--Agency D officials stated that their proposed questionnaire on reserve information was perhaps 6 months from completion and that there was no duplication between the sponsoring agency's questionnaire and their ongoing efforts. Agency D personnel stated they were not authorized to show their questionnaire, making comparisons impossible.

(3) On February 25, 1975, Agency B submitted a reporting proposal which required approximately 6,000 companies owning natural gas to report annually natural gas reserve and production information. Agency B stated one of the purposes of the reporting requirement was to find ways to alleviate the energy shortage in the United States by determining the status of proved gas reserves and the anticipated production of those reserves.

Agency B in its supporting statement said:

> "[We] require the data on gas reserves on a company basis reported directly to [us] because reserves reported to other government agencies are not accessible to [us]. Additionally, their data are not of the kind or at the level of detail necessary to verify accuracy. [We] need [our] own reserves reporting in order to carry out [our] own audit of the reported data as [we] deem necessary and proper."
>
> "Nor does the fact that [Agency A and Agency C] have also proposed to gather somewhat similar natural gas reserves data in any way reduce [our] need for the data to be gathered. It has not been shown and it cannot be shown that such data will be useful to [us] nor that such data will ever be available to us. Information collected by an agency for one regulatory purpose under one statute on a confidential basis could not in fairness to the parties submitting such data be disclosed to the public or other agencies without some hearing with respect to the disclosure of such data and findings that public disclosure overrides private needs for nondisclosure of proprietary data."

During review of these forms, we received about 60 written coments. Many comments addressed the issues of burden and duplication. We held meetings with Agencies A, B, and C and other interested Federal agencies to resolve these issues. Each agency believed it had an overriding need for the information, that the data was not duplicative, and that the burden on respondents had been minimized. In addition, each agency said it needed the information very quickly. In each case, during our clearance reviews the agencies agreed to some changes in their forms to reduce respondent burden and duplication.

Public Law 93-153 limits our considerations to the issues of insuring that the information sought is not

available from other Federal sources and that the burden on respondents has been minimized consistent with the needs of the sponsoring agencies. After much dialogue and with some modification, GAO cleared each of the forms.

OTHER PERSISTENT PROBLEMS

Many agencies have been remiss in submitting timely and complete information-collection proposals. Tnis problem relates primarily to proposals for continued use of existing plans and forms. We limit our clearance of repetitive-use forms to 3 years. This limitation is intended to require the regulatory agencies to periodically reassess their need for information and eliminate those forms which are no longer necessary. We require that all information-collection proposals be submitted not later than 45 days before the expiration date of the existing clearance.

Some agencies do not have the necessary internal controls to insure that repetitive-use forms requiring re-clearance are sent to us promptly. Frequently they are submitted to us days or months after the clearances have expired, along with a request for expeditious action to clear such forms. In addition, some agencies treat very lightly their responsibility for justifying the continued need for such forms.

CHAPTER 3

AMBIGUITIES IN THE FEDERAL REPORTS ACT

Several problems exist with interpreting our responsibilities under the Federal Reports Act.

1. We are responsible for determining that respondent burden has been minimized, but the regulatory agency makes the final determination on the need for the information and whether to collect it.

2. Two agencies have refused to submit most of their forms to us for clearance because they believe the law does not give us clearance jurisdiction over "forms adopted in the performance of regulatory duties."

3. The meaning is unclear of the portion of the law stating that information collected and tabulated by a regulatory agency shall, as far as is expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public.

Each of these is discussed in more detail below.

NEED VERSUS BURDEN ISSUE

A constant problem for us has been to determine how much pressure we can place on a regulatory agency to make changes in an information-collection proposal to "minimize respondent burden." Most issues involving respondent burden on which we received complaints are not keyed to forms design; i.e., layout and printed format or data structure. Instead, the issues of burden deal primarily with the issue of the need for the information.

As stated above we are responsible for determining that respondent burden has been minimized, but the regulatory agency makes the final determination on the need for the information and whether to collect it. The examples in this report demonstrate that we cannot effectively minimize re-respondent burden unless we can challenge an agency's need for information. We believe the law needs to be clarified on this issue.

In this regard, the Federal Power Commission commented to us on its interpretation of the legislative intent of our role of minimizing respondent burden (See app. IV.) The Commission believes the purpose of our review is to eliminate the burden of excessive duplication. Further, the Commission states that if the burden is viewed as a

separate responsibility then the problems outlined in this report necessarily will result.

AUTHORITY FOR REVIEWING AGENCY FORMS

The law (44 U.S.C. 3512) states that we shall review the collection of information required by the independent Federal regulatory agencies to insure that information is obtained with a minimum burden on respondents and that unnecessary duplication in information collection among Federal agencies is eliminated. GAO has defined collection of information as

> "the soliciting or obtaining of facts on an identical item from 10 or more persons by use of report forms, application forms, schedules, questionnaires, letters, plans, or similar methods or the imposition of recordkeeping or record maintenance requirements concerning an identical item and affecting 10 or more persons."

This definition is similar to that of OMB's in carrying out its role under the Federal Reports Act.

Two agencies, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), believe that only a small number of their information-gathering activities are subject to the Federal Reports Act.

SEC believes that some of its activities involve collection of information subject to 44 U.S.C. 3512, but other SEC responsibilities involve the "disclosure" of information to the public rather than collection activities, and accordingly, are not subject to that provision. The SEC contends that, in contrast to other Government agencies which solicit information for their own purposes, SEC serves as a conduit through which information is disclosed to investors pursuant to Federal securities laws.

For almost 2 years, SEC has advised us about all forms it adopted, while formally submitting for review and clearance only those forms which it concedes to be subject to our jurisdiction. We temporarily accepted this practice to gain more experience on the nature of SEC's activities by evaluating on a concrete basis whether our jurisdiction extended to the disputed forms.

During this 2-year period, SEC formally submitted nine forms for clearance. During this same period, we received approximately 186 information submissions. While these information submissions are difficult to evaluate

because of insufficient explanatory material, most of these submissions appear to be the kind which should be sent to us for clearance.

CFTC, a new agency established in 1975, has established a position similar to that of SEC. Its reasoning is that "forms adopted in the performance of regulatory duties" are not subject to 44 U.S.C. 3512. To date, CFTC has formally submitted one form for clearance.

The underlying reasons for these agencies' refusal to submit most of their forms to us for clearance are that they believe this would be an intrusion into their regulatory responsibilities. We disagree with the position of SEC and CFTC and are currently working with these agencies to resolve the issue.

MAXIMIZING THE USEFULNESS OF INFORMATION

The statute states that information collected and tabulated by a regulatory agency shall, as far as expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public.

The chairmen of two congressional subcommittees have suggested that this provision of the law gives us the statutory authority, and indeed the duty, to evaluate an agency's plans to conduct its information gathering in a manner that would make the information available to the maximum extent possible to the public. These Members of Congress suggested that we withhold clearance of information-gathering proposals that do not meet standards for confidentiality. Their premise is that regulatory agencies too often give pledges to respondents to hold information confidential and thereby prevent other interested parties from gaining access to the information.

We believe the law does not give us authority to withhold clearance of a submission because of what we may consider to be either excessive or insufficient confidentiality restrictions. However, we recognize that under the audit functions given to us in the statute, we can analyze the confidentiality issues in agency submissions even if we cannot deny clearance for noncompliance.

We are currently formulating an approach whereby we will give advice to the regulatory agencies on their use of confidentiality provisions. Should the Congress want us to withhold clearance on the basis of a confidentiality issue, the law will have to be changed to reflect this.

CHAPTER 4

CONCLUSIONS, AGENCY COMMENTS, AND MATTERS FOR CONSIDERATION BY THE CONGRESS

CONCLUSIONS

The root of the expanding Federal paperwork burden lies in the Federal Government's continued expansion of its responsibilities and need for information. New agencies are created and granted broad authority to collect the information needed to carry out their assigned responsibilities. Little attention is paid in legislation to the associated paperwork burden. In this environment, demands for information and the compliance burden on the public will continue to increase.

However, opportunities are available for keeping the Federal paperwork within reasonable bounds--primarily by detecting and correcting problems in the way agencies formulate their information-gathering activities, but not by clearance actions on individual forms.

During the past 2 years we have made clearance decisions on numerous controversial forms. These forms were controversial and difficult to handle within a 45-day period for two basic reasons.

First, the sponsoring agencies were not doing an adequate job in (1) soliciting and considering comments, particularly from respondents, (2) giving consideration to respondent burden, and/or (3) identifying and reducing duplication.

Second, the authority given to us by the Congress is both narrow and subject to varying interpretations. For instance, while the law requires us to determine that information is not available from other Federal sources and the burden on respondents has been minimized, it also states that the agency shall make the final determination on the need for the information and whether to collect it. We believe this too greatly limits our option to withhold clearance of an information collection proposal. The issues of need are difficult, if not impossible, to separate from respondent burden. It is, after all, the agency's presumed need for the information which precipitates the burden. In addition, two agencies have refused to submit most of their forms to us for clearance because they believe the law does not give us clearance jurisdiction over forms adopted in the performance of regulatory duties. Finally, confusion exists over the meaning of our role to insure that information collected and tabulated by an independent regulatory

agency shall, as far as expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and to the public.

While some limited contribution toward reducing unnecessary duplication and burden can be made at the time an agency submits a proposed form for clearance, a much broader and earlier review of the subject is needed to have any impact on the problem. Any area of wide disagreement between an agency proposing a reporting requirement and the potential respondents cannot be adequately resolved in 45 days after a proposal has been submitted for clearance.

If improvements are to be made in controlling the Federal paperwork burden, agencies must assume more direct responsibility for planning, developing, and controlling their information-collection activities by complying with the Federal Reports Act on both a literal and interpretative level.

This report to the Congress will be followed by a series of GAO reports on the performance of the regulatory agencies in their information-gathering activities. These observations indicate serious deficiencies in the regulatory agencies' practices and procedures for formulating and reexamining their information-gathering plans and reports. The basic causes for these and other problems will be examined in continued studies of the agencies' information-gathering activities.

In the interim, we are in the process of making changes to clarify and strengthen our clearance regulations. In addition, each of the 13 independent regulatory agencies is being requested to reexamine its information-gathering practices and procedures and take the necessary corrective actions to prevent the recurrence of the kinds of problems discussed in this report. Some agencies are already beginning to take action to correct these problems. Along with positive corrective actions, which each agency can take, we believe that certain basic assumptions which appear to underlie agency positions need to be changed. These are:

1. The need for the information automatically overrides burden on respondents in providing that information.

2. Obtaining information directly from respondents is better than using data from existing reports provided to other agencies.

3. Agencies take too long to work together to design information-gathering plans of mutual benefit.

Similar changes also are needed in respondent behavior. Many respondents spend tremendous time and effort using the clearance process as a way of fighting reporting requirements rather than working with the agencies to constructively solve problems raised by the reporting requirements.

AGENCY COMMENTS

Each of the 13 independent Federal regulatory agencies subject to our information-collection reviews was given an opportunity to comment on this report. Several agencies responded in writing. Their comments are included as appendixes to this report.

Comments received from the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Energy Administration, and the Federal Power Commission were generally in agreement with the report's conclusions. (See apps. II, III, IV, and VII.)

Comments received from the Nuclear Regulatory Commission (NRC) indicated its belief that most of the agency weaknesses noted in the report were not applicable to NRC. It felt the report should focus on those agencies and agency practices that present a problem, or it should present both the positive and negative aspects of agency clearance procedures. However, the purpose of this report is not to criticize the practices of an individual agency, but to highlight the major problems we experience in reviewing the information requirements of the regulatory agencies. We will issue reports on the information-gathering practices of individual regulatory agencies at a later time. (See app. V.)

Although CFTC generally disagreed with the conclusion that the authority of the clearance agency should be strengthened, it did agree that meaningful steps should be taken to remedy agency abuses of the type discussed in the report. CFTC reaffirmed its position in the dispute with us on applying the Federal Reports Act to certain regulatory activities. CFTC also commented on what it considers the redundancy of our review where agency actions are subject to the Administrative Procedures Act and on the adverse impact of our review upon agency independence. (See app. VI.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

We have commented on several bills designed to give us more responsibilities in clearing the information-collection proposals of the Federal agencies. We continue to maintain that the clearance of information proposals involves us in the day-to-day performance of executive activities in a manner inconsistent with our responsibility for oversight and monitoring of such activities.

We believe that we could do more to help reduce the Federal paperwork burden if the Congress would free us from the clearance responsibilities of the information-collection plans of the regulatory agencies. Our limited resources could be used more productively for auditing the information-gathering practices and procedures of all Federal agencies.

We recommend that the Congress consider reassigning our responsibilities for information clearance to an executive agency responsible for the entire clearance function, preferably OMB.

In any event, the role of the agency responsible for clearance of regulatory reports should be clarifed if that agency is to function effectively. The Congress, in enacting section 409 of Public Law 93-153, subjected regulatory agencies to less stringent clearance rules than other Federal agencies. Options for the Congress to consider in changing the law range from returning the clearance function to OMB with its full powers under the Federal Reports Act, to exempting independent regulatory agencies from the Federal Reports Act.

We believe there is a need for greater controls over information-gathering activities of the regulatory agencies and recommend that the Congress consider

--returning the clearance function to OMB with OMB's present authority or

--clarifying and strengthening the legislation to allow the clearance agency to challenge the need for information. Four options are discussed in detail in appendix I including suggested legislative language to implement each option.

OPTIONS FOR CHANGING GAO'S ROLE UNDER FEDERAL REPORTS ACT

Section 409 of Public Law 93-153 dated November 16, 1973, gave the independent Federal regulatory agencies more leeway than other agencies of the Federal Government to collect the information they need. This was done at the risk of increasing the paperwork burden on the public. We believe that the Congress should reconsider its November 1973 decision. It is our opinion that greater controls are needed over the regulatory agencies' information-gathering activities.

There are many courses of action the Congress could consider for the clearance of the regulatory agencies' information requests. The language of the current law is presented below, followed by some of the options the Congress should consider in changing that law. These options range from greater controls, which we endorse, to exempting the regulatory agencies from the Federal Reports Act. This range is presented to illustrate that if the Congress believes reduced Federal reporting requirements is the more pressing issue, greater controls are needed. On the other hand, if regulatory agency independence is of greater importance, then controls should be reduced or eliminated. In any event, the law needs to be clarified on this issue.

The language of section 409 of Public Law 93-153 is as follows:

> Section 409. (a) Section 3502 of title 44, United States Code, is amended by inserting in the first paragraph defining "Federal agency" after the words "the General Accounting Office" and before the words "nor the governments" the words "independent Federal regulatory agencies,".
>
> (b) Chapter 35 of title 44, United States Code, is amended by adding after section 3511 the following new section:
>
> "§ 3512. Information for independent regulatory agencies
>
> "(a) The Comptroller General of the United States shall review the collection of information required by independent Federal regulatory agencies described in section 3502 of this chapter to assure that information required

by such agencies is obtained with a minimum burden upon business enterprises, especially small business enterprises, and other persons required to furnish the information. Unnecessary duplication of efforts in obtaining information already filed with other Federal agencies or departments through the use of reports, questionnaires, and other methods shall be eliminated as rapidly as practicable. Information collected and tabulated by an independent regulatory agency shall, as far as is expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public.

"(b) In carrying out the policy of this section, the Comptroller General shall review all existing information gathering practices of independent regulatory agencies as well as requests for additional information with a view toward--

"(1) avoiding duplication of effort by independent regulatory agencies, and

"(2) minimizing the compliance burden on business enterprises and other persons.

"(c) In complying with this section, an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection--

"(1) the agency submitted to the Comptroller General the plans or forms, together with the copies of pertinent regulations and of other related materials as the Comptroller General has specified; and

"(2) the Comptroller General has advised that the information is not presently available to the independent agency from another source within the Federal Government and has determined that the proposed plans or forms are consistent with the provision of this section. The Comptroller General shall maintain facilities for carrying out the purposes

of this section and shall render such advice to the requestive independent regulatory agency within 45 days.

"(d) While the Comptroller General shall determine the availability from other Federal sources of the information sought and the appropriateness of the forms for the collection of such information, the independent regulatory agency shall make the final determination as to the necessity of the information in carrying out its statutory responsibilities and whether to collect such information. If no advice is received from the Comptroller General within 45 days, the independent regulatory agency may immediately proceed to obtain such information.

"(e) Section 3508(a) of this chapter dealing with unlawful disclosure of information shall apply to the use of information by independent regulatory agencies.

"(f) The Comptroller General may promulgate rules and regulations necessary to carry out this chapter."

FIRST OPTION FOR CHANGING LAW

Repeal 44 U.S.C. § 3512 (added by § 409 of Public Law 93-153) and further amend 44 U.S.C. § 3502 (as amended by § 409 of Public Law 93-153) by deleting from the first paragraph defining "Federal agency" after the words "the General Accounting Office" and before the words "nor the governments" the words "independent Federal regulatory agencies,."

This alternative would return the regulatory agencies to OMB's clearance jurisdiction and treat them the same as other agencies subject to OMB clearance. This option would also have all the agencies of the Federal Government which are subject to the Federal Reports Act clearing their public information-gathering requests with one agency--a desirable feature. It would also place the clearance function within an executive agency--another desirable feature.

SECOND OPTION

This option, as well as option 3, hereafter, reflect our view that if the regulatory agencies are to remain subject to special clearance procedures (rather than clearance

by OMB under the same standards applicable generally to Federal agencies), this clearance function should be placed in an agency other than GAO. We continue to believe that our performance of this function is inconsistent with the concept of independence and objectivity of the GAO. Therefore, in the proposed changes in options 2 and 3, "(appropriate agency head)" is substituted for references to the Comptroller General to represent whatever agency is to be assigned the clearance function.

Strengthen the role of the agency having the responsibility for reviewing and clearing the information-gathering efforts of the regulatory agencies by amending 44 U.S.C. § 3512 in the following way.

1. In subsections (a), (b), (c) and (f), substitute for "the Comptroller General" the designation of the head of whatever agency is to have the clearance function.

2. In subsection (c)(2) change "45 days" to "60 days."

3. Delete subsection (d) and substitute the following subsection.

"(d) Upon the request of any party having a substantial interest, or upon his own motion, the (appropriate agency head) is authorized at his discretion to determine whether or not the collection of any information by any independent regulatory agency is necessary for the proper performance of the functions of such agency or for any other proper purpose. Before making any such determination, the (appropriate agency head) may give to such agency and to other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the (appropriate agency head) determines the collection of such information by such agency is unnecessary, for any reason, such agency shall not thereafter engage in the collection of such information."

4. Add a subsection (g) as follows:

"(g) Determinations made by the (appropriate agency head) under this section shall not be subject to judicial review."

These changes would remove some provisions of the existing section 3512 which seriously hinder efforts to conduct meaningful clearance reviews. Specifically, it would lengthen from 45 to 60 days the time limit for clearance reviews and would remove the present stipulation that the regulatory agency "shall make the final determination as to the necessity of the information in carrying out its statutory responsibilities and whether to collect such information." We believe that the additional 15 days will provide the clearance agency with the necessary time to analyze and resolve public comment on forms.

It would also include a new provision allowing the clearance agency to determine a regulatory agency's need for information in appropriate cases. OMB now has such authority as to agencies within its jurisdiction under 44 U.S.C. § 3506. Finally, the proposed new subsection 3512(g) would expressly exempt clearance determinations under that section from judicial review. We believe that the present Federal Reports Act does not contemplate judicial review for the essentially intra-Governmental clearance process. This question is presently before the courts in connection with several actions challenging GAO clearance determinations; enactment of the proposed amendment would eliminate any doubt in the matter.

We believe this option is necessary if the clearance agency is to effectively perform the role of assuring that respondent burden has been minimized.

THIRD OPTION

Change the language of 44 U.S.C. § 3512 to read as follows.

> "(a) The (appropriate agency head) shall review the collection of information required by independent Federal regulatory agencies described in section 3502 of this chapter to assure that unnecessary duplication of efforts in obtaining information already filed with other Federal agencies or departments through the use of reports, questionnaires, and other methods is eliminated. Information collected and tabulated by an independent regulatory agency shall, as far as is expedient, be collected in a manner to maximize the usefulness of the information to other Federal agencies and the public.

"(b) In carrying out the policy of this section, the (appropriate agency head) shall review all existing information-gathering practices of independent regulatory agencies as well as requests for additional information with a view toward avoiding duplication of effort by independent regulatory agencies.

"(c) In complying with this section, an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection--

"(1) the agency submitted to the (appropriate agency head) the plans or forms, together with the copies of pertinent regulations and of other related materials as the (appropriate agency head) has specified; and

"(2) the (appropriate agency head) has advised that the information is not presently available to the independent agency from another source within the Federal Government. The (appropriate agency head) shall maintain facilities for carrying out the purposes of this section and shall render such advice to the requestive independent regulatory agency within 45 days. If no advice is received from the (appropriate agency head) within 45 days, the independent regulatory agency may immediately proceed to obtain such information."

"(d) Section 3508(a) of this chapter dealing with unlawful disclosure of information shall apply to the use of information by independent regulatory agencies.

"(e) The (appropriate agency head) may promulgate rules and regulations to carry out this section.

"Determinations made by the (appropriate agency head) under this section shall not be subject to judicial review.

This alternative would, in essence, remove the provisions of the existing section 3512 which provide for consideration of minimal compliance burden in the conduct of

clearance reviews. Assessment and deliberation of burden would then rest with the regulatory agencies. Also, this alternative would eliminate the present stipulation that the regulatory agency "shall make the final determination as to the necessity of the information in carrying out its statutory responsibilities and whether to collect such information."

The role remaining for the clearance agency would be to make clearance determinations on the issue of duplication. The clearance agency would have final authority on whether to clear a form it determined was duplicative of other collected information. This alternative would also expressly exempt clearance determinations from judicial review.

These changes are suggested to clarify the issue of the relationship of minimizing respondent burden to determining the need for information. We believe that if a clearance agency is responsible for assuring respondent burden has been minimized, it must have the authority to challenge an agencies need for information. These issues are inseparable.

In the prior option, we suggested the clearance agency be given authority to challenge need. This option states, in effect, that if Congress does not want a clearance agency to challenge need, it should then remove from the clearance agency responsibility for assuring the respondent burden has been minimized.

We believe the clearance agency should have responsibility for assuring that burden has been minimized. Nevertheless, the Congress may wish to consider this option.

FOURTH OPTION

Exempt those agencies defined as independent regulatory agencies (including the Federal Energy Administration) from the Federal Reports Act. This could be accomplished by repealing 44 U.S.C. § 3512, and amending the definition of "Federal agency" in 44 U.S.C. § 3502 by inserting "Federal Energy Administration" immediately after "independent Federal regulatory agencies,".

This report indicates oversight of the regulatory agencies' reporting requirements is needed. Therefore, we believe this is the least desirable option. It is presented to illustrate that if the "independence" of the regulatory agencies is a priority item, such independence can be obtained in the agencies' information-gathering efforts only if they are exempted from the Federal Reports Act.

* * * * *

Another issue that should be clarified in the present law is the statement in 44 U.S.C. 3512 paragraph (a): "Information collected and tabulated by an independent regulatory agency shall, as far as expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public."

As stated in chapter 3, the chairmen of two congressional subcommittees have suggested that this provision gives us the statutory authority, and indeed the duty, to evaluate an agency's plans to conduct its information gathering in a manner that would make the information available to the maximum extent possible to the public. Further, these Members of Congress suggested that we withhold clearance of information-gathering proposals that do not meet standards for confidentiality.

We believe the law does not give us such authority. Although we cannot formally deny clearance for misuse of confidentiality provisions, we are currently formulating an approach whereby we will advise the regulatory agencies on their use of confidentiality provisions. Should the Congress desire the clearance agency to withhold clearance based on an issue of confidentiality, the Federal Reports Act would have to be amended to incorporate such a provision.

APPENDIX II

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

February 23, 1976

Mr. Monte Canfield, Jr.
Director
Office of Special Programs
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Canfield:

Thank you for the opportunity to comment on your draft report to Congress regarding the General Accounting Office's (GAO) experience in administering the Federal Reports Act. Since no specific Commission reporting requirements were discussed in the report, we do not believe a meeting with your staff is necessary. However, we generally agree with GAO's position that responsibility for administering the Federal Reports Act, when divided between that agency and the Office of Management and Budget, weakens the program overall; results in duplication of effort within Government; and, because of the duplicative clearance requirements which now exist, handicaps both regulatory and executive agencies attempting to foster greater cross-utilization of information and coordination of data collection activities. If regulatory agencies are to remain subject to the Federal Reports Act, then we support your position that all clearance responsibility should be vested in a single agency and such responsibility is best suited to the basic mission of the Office of Management and Budget.

Again, we appreciate your courtesy in providing us the opportunity to comment on the proposed report.

Sincerely yours,

George M. Stafford
Chairman

APPENDIX III

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428

February 26, 1976

IN REPLY REFER TO: B-1-44

Mr. Monte Canfield, Jr.
Director
Office of Special Programs
General Accounting Office
Washington, D. C. 20548

Dear Mr. Canfield:

Thank you for transmitting to us a copy of your draft report entitled "Status of GAO's Responsibilities under the Federal Reports Act." We find it to be a searching and objective review of GAO's role under this Act and the performance of the independent Federal regulatory agencies in carrying out their information-gathering activities. Although the report did not cite any examples of CAB information-gathering practices, we share some of the same problems encountered by the other regulatory agencies. Therefore, we wish to make some observations about your report.

The report states that the regulatory agencies, in most instances, do not consider respondent burden when they develop an information-gathering proposal. The Board's recurrent reporting requirements are prescribed through the rule-making process. In evaluating the reasonableness of a reporting requirement the Board carefully analyzes the burden it will impose on the industry compared to the benefits to be derived from collection of the data. Your report fortifies our thinking that rule-making procedures adequately consider burden and only a minimum of advantage can be gained by additional review by GAO. Therefore, we believe reporting requirements should not undergo additional review for burden after the rule-making process unless such burden would result from duplication.

Another observation relates to your suggestion that Congress free you from the clearance responsibilities of the information-collection proposals of the regulatory agencies and place them with another agency, preferably OMB. We would have no problem with the clearance function being transferred back to OMB as long as that agency would have no more

Mr. Monte Canfield, Jr. (2)

authority than it had before this function was transferred to GAO. Likewise, we would have no problem with your alternative suggestion, GAO retaining and strengthening its clearance authority, as long as the new authority does not exceed that previously held by OMB.

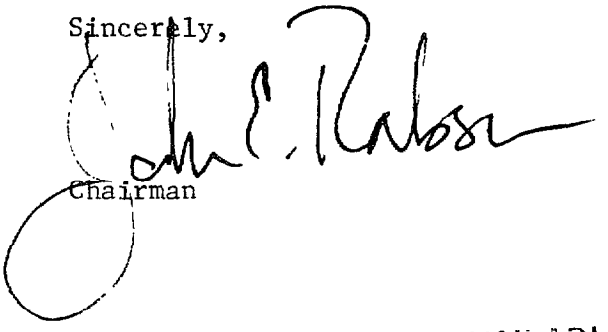
Finally we would agree with your statement that the primary responsibility for monitoring reporting requirements rest with the agencies. The Board is currently conducting a comprehensive review of reporting requirements to determine how regulatory burdens in the air transport industry can be reduced. Two of our more recent efforts are set forth below:

SEC/CAB Task Force for the Reduction of Reporting Burden. At the initiation of CAB, the SEC and CAB have formed a task force which has been reviewing reporting requirements to identify areas where the same report would be acceptable to both agencies. This effort is also being coordinated with a committee of the American Institute of Certified Public Accountants to determine report schedules that can be audited as part of the air carriers' independent audit. The Board's staff is redesigning certain reporting schedules to make them acceptable for reporting to both SEC and CAB. This should significantly reduce the reporting burdens on the carriers as well as the audit time required by CAB auditors.

Reporting by Air Freight Forwarders. As part of our review of reporting requirements, air freight forwarder reporting has been reduced by approximately 75 percent. The frequency of reports filed by all forwarders has been reduced from quarterly reporting to annual reporting, and some forms have been eliminated entirely. The reporting of the smaller forwarders has been reduced to a single schedule and certification of insurance. These changes will eliminate approximately 14,000 reports on an annual basis.

We have no further comments at this time, but if you have questions on this matter please call on us.

Sincerely,



Chairman

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

Mr. Monte Canfield, Jr.
Director, Office of Energy Programs
441 G Street, N. W.
General Accounting Office
Washington, D. C. 20548

MAR 5 1976

Dear Mr. Canfield:

This is in response to your letter of February 4, 1976 requesting comment upon a draft report entitled, "Status of GAO's Responsibilities Under the Federal Reports Act."

The draft report summarizes GAO's experience thus far under the legislation assigning it responsibility for providing advance clearance of information gathering forms proposed by independent regulatory agencies. The report recommends that either the existing law be strengthened to permit a more rigorous GAO intervention or that GAO be permitted to review all Federal information gathering efforts rather than its present duties. The Commission has no comment on these specific recommendations, but it does concur with the GAO conclusion that the present wording of the statute presents certain ambiguities that create problems in compliance for the regulatory agencies.

One of the principal stumbling blocks that this agency has encountered in obtaining clearance is the question of the burden to be imposed by the proposed form on the respondents. GAO views burden as a separate consideration from that of duplication. However, it is more in keeping with the expressed legislative intent to read Section 3512 to mean that the purpose of GAO review is to eliminate the burden of excessive duplication. The latter interpretation is certainly more consistent with the underlying purpose of the enabling legislation. If burden is tied to duplication, then there is a tangible base for decision on the clearance of a particular form, but if burden is viewed as a separate component, then the problems outlined in the GAO report necessarily result, since its review decision then is entirely subjective. Moreover, it

Mr. Monte Canfield, Jr.

reaches into the substantive aspects of the reporting requirements, which are the sole province of the regulatory agency, not GAO.

With the exception of the misinterpretation just noted, the GAO draft report appears to accurately portray the current status of the legislation and the implementation of it. The Commission has carefully reviewed the GAO criticisms of agency efforts at clearance, especially with regard to soliciting comments from potential respondents, computing the burden of the proposed form, and consulting with other agencies to obtain needed data. I believe that this agency has made a credible effort thus far in all of these areas, but further attention to such matters will be paid as a result of the recommendations and conclusions of the report.

Very truly yours,

Mary Kidd Peek

Secretary

APPENDIX V

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 5, 1976

MEMORANDUM FOR: Monte Canfield, Jr., Director
Office of Special Programs
U.S. General Accounting Office

FROM: Thomas J. McTiernan, Director
Office of Inspector and Auditor

SUBJECT: GAO DRAFT REPORT ENTITLED "STATUS OF GAO'S RESPONSIBILITIES UNDER THE FEDERAL REPORTS ACT"

Attached are NRC's comments on the subject draft report, per your request to Chairman Anders on February 4, 1976. Please let us know should you need any additional information.

Attachment:
As stated

APPENDIX V

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 24, 1976

MEMORANDUM FOR: Thomas J. McTiernan, Director
Office of Inspector and Auditor

FROM: Lee V. Gossick
Executive Director for Operations

SUBJECT: GAO DRAFT REPORT ENTITLED "STATUS OF GAO'S RESPONSIBILITIES UNDER THE FEDERAL REPORTS ACT"

In accordance with your memorandum of February 11, 1976, we have reviewed the subject report and object to its overall conclusions. The report is based on the 18 most controversial new proposals submitted by agencies during FY 1975. A new proposal is considered "controversial" if it "elicited numerous, substantive complaints," and of the 18 "controversial" items considered, 13 related to only two agencies, the Federal Energy Administration and the Federal Trade Commission. Because of its limited scope, the report is decidely negative in character and tends to impute to all agencies the problems associated with just a few. Such an approach, we believe, is misleading and completely ignores the other 53 new proposals, including the nine submitted by the NRC, which were not "controversial," i.e., did not generate complaints.

The NRC routinely has sought and considered the views of those persons who would be affected by its information-gathering actions, and there have been few, if any, complaints that we are aware of as a result of NRC's submissions to GAO. Therefore, with respect to the NRC, we do not agree with the generalization that "serious problems exist in the manner in which the regulatory agencies conduct their information-gathering activities" (page 7). We also do not accept, to the extent that it may be implied to include the NRC, the conclusions on pages 24 and 25 of the report that there are "serious deficiencies in the regulatory agencies practices and procedures" and that "basic assumptions which appear to underlie agency positions need to be changed."

With respect to GAO's recommendation on pages iv and 26 that it be freed from its clearance responsibilities and that the responsibility be reassigned to OMB, the NRC believes that if the function is reassigned, that the independence of the regulatory agencies to make the final determination on the need for the information and whether to collect it should be retained. Section 409 of Public Law 93-153 was based upon Congress' desire to prevent the clearance procedure from becoming a delaying or obstructing factor in investigations and data collections necessary for independent regulatory agencies to carry out their quasi-judicial functions. That the authority to determine what is necessary is vested in

APPENDIX V

Thomas J. McTiernan

such agencies is unquestioned in this legislation. If that authority is abused, the agencies should be answerable directly to the Congress, and no other agency should have a veto authority over what information a regulatory agency needs to carry out its mission.

In summary, we do not believe the draft report sufficiently differentiates between the practices of the various agencies concerned to constitute a performance rating of those agencies in carrying out their information-gathering activities. We believe the report should either be revised to make it clear it is focusing upon just those agencies and agency practices that present a problem, or it should be revised to present a more balanced view of all agencies, presenting both the positive and negative aspects of agency clearance procedures.

If GAO decides to revise the report to encompass the activities of all regulatory agencies, we suggest that a better way to measure overall agency performance would be to break the various agency submissions down by the number of respondents affected or by the estimated burden per respondent. "Numerous substantive complaints," as used in GAO's test of controversial, is a relative term. Twenty complaints out of a respondent universe of 6,000 may be minor, whereas 20 complaints out of a respondent universe of 50 would be significant. Similarly, if the estimated burden per respondent is large, and few complaints are received, it would indicate that the agency has done a reasonable job in reducing the burden to a minimum, and the persons affected recognize the agency's legitimate need for the information. We also believe a further breakdown could be made between those information-gathering activities which are imposed by a formal rule making under the Administrative Procedure Act and those which are administratively imposed by an agency. Clearly in the former case, affected individuals have the opportunity to comment on the proposal while it is still in the formulative stage and to seek judicial review if an agency acts in an arbitrary or capricious manner. With respect to the NRC, almost all requirements are imposed by a formal rule making with the opportunity for public comment.

Lee V. Gossick
Executive Director for Operations

COMMODITY FUTURES TRADING COMMISSION

1120 CONNECTICUT AVENUE N. W.
WASHINGTON, D. C. 20036

March 5, 1976

Mr. Monte Canfield, Jr.
Director, Office of Special
Programs
United States General Accounting Office
Washington, D. C. 20548

Re: Status of GAO's Responsibilities under the Federal Reports Act

Dear Mr. Canfield:

We appreciate the opportunity given us by your letter of February 4, 1976, to review and comment upon the report that the General Accounting Office proposes to send to Congress concerning the status of GAO's responsibilities under the Federal Reports Act. We also appreciate the cooperative spirit in which you and your staff have approached our disagreement over the fundamental issue of regulatory independence.

As we understand it, among other things, your report will advise Congress that this Commission disagrees with the General Accounting Office concerning the applicability of the Federal Reports Act to certain regulatory activities of this Commission. At our meeting with members of your staff on Friday, February 27, 1976, we suggested that the report should clearly present for Congressional evaluation not only the fact of our disagreement, but also the legal and policy considerations upon which our position is based. Your staff suggested that it would be possible simply to append to your report copies of the correspondence we have had with your agency concerning this issue. For this purpose, I would suggest appending to your report the letter of October 7, 1975, that Howard Schneider, our General Counsel, sent to Mr. Hassell B. Bell, then of your office; your response dated November 18, 1975; Mr. Schneider's letter to you dated January 8, 1976; your letter of February 24, 1976, to Chairman Bagley; and the instant letter.

As we informed your staff, we would hope that the report could more fully explore certain important policy considerations that are raised by some of your proposals. For example, the draft report recognizes that the activities of the General Accounting Office under the Federal Reports Act has caused it to intrude upon regulatory decision-making functions of the independent agencies (e.g., pp. 25-26). Nevertheless, it recommends that the oversight authority now exercised by the General Accounting Office be clarified and strengthened (p. 26). The draft

report also strongly urges that oversight responsibility with respect to the independent regulatory agencies be returned to the Office of Management and Budget (p. 26). In our view, the proposed report should more adequately emphasize that either of these recommendations, if adopted, would tend significantly to erode the independence of affected regulatory agencies. Moreover, if Congress were to accept both your recommendations--and return exclusive administration of the Federal Reports Act to the Executive Branch, while granting it broad authority to delay or prevent implementation of regulatory judgments--the independence of agencies such as ours would, in our view, substantially be impaired.

We appreciate that the Federal Reports Act is addressed to a significant problem and that it is extremely important to attempt to minimize the reporting burden that the government places upon the public. We would like to facilitate this desirable result. For this reason, we readily agree that meaningful steps should be taken to remedy agency abuses of the type reflected in your report. We do not agree, however, that the Federal Reports Act provides the only available means to that end, particularly where substantive regulatory judgments are involved. Thus the report, as drafted, does not highlight the redundancy of GAO review where agency functions are involved that are subject to meaningful judicial review. Neither does it appear fully to recognize and comment upon the adverse impact of review under the Federal Reports Act upon agency independence. As I believe you understand from our prior correspondence, it is with respect to this area of agency functioning that we believe the Federal Reports Act does not have, and was not intended to have, application.

For example, a regulatory agency might conclude that the public interest requires certain information to be disclosed by regulated entities and adopt a rule to that effect. In adopting such a rule the agency would have been required to comply with requirements of the Administrative Procedure Act concerning public notice and opportunity for comment. See 5 U.S.C. 553. In the course of the rulemaking proceeding, interested persons would have been afforded an opportunity to express their views, among other things, concerning the necessity for the rule and any adverse impact it might have--including the burden of excess paperwork and duplication. Significantly, judicial review of the agency's judgment will have been available to any affected person and the courts would have been entitled to evaluate whether the agency gave due consideration to all significant comments in reaching its decision. See, e.g., Portland Cement Association v. Ruckelshaus, 486 F. 2d 375, 393-394 (D.C. Cir. 1973). In contrast, it is problematical whether the courts would ever have opportunity to evaluate the arguably detrimental impact of GAO's

intrusion into the regulatory sphere, which, at a minimum, will involve possibly harmful delays and where vigorous oversight would inevitably tend to substitute the judgment of GAO for that of the agency on the merits of the agency's decision.

On the other hand, meaningful judicial review is unlikely when an agency is merely gathering statistical information by which to judge whether to initiate a rulemaking proceeding. In our view, there would be no substantial impact upon agency independence if the General Accounting Office or an executive branch agency should exercise authority to assure that the agency really needs the information and that it is not otherwise available. In this context, however, even if the judgment of GAO or OMB were in some sense substituted for that of the regulatory agency, it should not be substituted with respect to a substantive regulatory judgment of the type that only the independent agency is authorized by law to make.

At the February 27 meeting we also briefly discussed with your staff your letter of February 24, 1976, to Chairman Bagley, in which you responded to the legal position taken in our earlier correspondence. Since I am satisfied that we each understand the other's position, and that the proper resolution of these matters would rest either in the courts or in Congress, there would be no value in any further attempt on my part to offer rebuttal to your views.

In addition to your statement of legal position, however, your letter of February 24 expresses your intent to publish a notice in the Federal Register advising affected persons when you believe we are collecting information without appropriate clearance from your agency. As we informed your staff, we have no quarrel with the adequacy or fairness of the language you propose, and we understand that it is your opinion that "lack of clearance relieves respondents of the legal obligation to honor . . . [a] requirement" to disclose information.

As I am sure you will understand, however, we view the matter quite differently and intend to enforce the requirements of the Commodity Exchange Act against any person who fails to comply with rules and regulations promulgated by the Commission in accordance with their terms--including rules and regulations which may require disclosure of information or compliance with prescribed recordkeeping requirements. We are particularly concerned that it may primarily be those persons who have something to hide, and against whom the public requires protection, who may assert your position in refusing to comply with requirements we have adopted for the protection of the public.

APPENDIX VI

Accordingly, we intend to recommend to the Commission that when it promulgates rules and regulations in the future it should give notice to the public of the existence of the dispute between your agency and ours and emphasize that the dispute does not, in the Commission's view, relieve any person from the obligation fully to comply with the Commodity Exchange Act and rules and regulations the Commission adopts--including rules and regulations which may involve disclosure of information or the maintenance of books and records. It would be our intent vigorously to enforce the requirements of the Commodity Exchange Act against all persons who conduct business activities that subject them to the requirements of that Act who have not fully complied with all of its requirements and with the requirements of all rules and regulations the Commission has prescribed.

Very truly yours,

Richard E. Nathan
Deputy General Counsel

APPENDIX VII

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAR 31 1976

OFFICE OF THE ADMINISTRATOR

Mr. Monte Canfield, Jr.
Director
Office of Special Programs
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Canfield:

Thank you for the opportunity to review and comment on the draft report entitled "Status of GAO's Responsibilities under the Federal Reports Act."

Essentially, we agree with the General Accounting Office's (GAO) purpose and conclusions as reflected in the report and wish to offer the following specific comments and observations.

We agree that the three most difficult problems relate to: (1) the soliciting and considering of potential respondents' comments, (2) the analysis and estimation of respondents' burden, and (3) the lack of interaction among Federal agencies collecting similar data. However, we do not agree with the stated basic causes for the problems. GAO feels that the agencies believe that, (1) their need for data automatically overrides respondents' burden, (2) it is better to obtain data directly from respondents than to use existing reports, and (3) that agencies do not work together because it takes too long.

Our experience with acquisition of energy information indicates that the main reason for the stated problems is the expanding Federal Government responsibilities in the energy area and the resulting need for obtaining more information quickly. In addition, new legislation has established additional reporting requirements on the energy regulatory agencies, and the Congress has often established short reporting deadlines that preclude the agencies from taking all of the steps required by GAO.

In this environment, the total compliance burden on the public will be likely to continue to increase, despite the clearance efforts of GAO, the agencies, or any other organization that assumes the functions.

GAO, in Chapter 4, states that there are opportunities available for keeping the Federal paperwork within reasonable bounds. The FEA agrees and has taken several significant steps to improve the quality of its forms clearance process. Specifically, we are considering revising the current FEA Forms Clearance Directive to include a requirement for Federal Register notices on all major new data collection plans prior to submission to GAO. This directive will also include a plan for "pretesting" major new collection forms with potential respondents prior to the GAO clearance request.

Additionally, FEA has taken the following data-related actions:

a. Automated the forms review and clearance system for more positive control and reporting.

b. Installed an energy data dictionary system that contains information about all FEA forms.

c. Collected and published information on the Federal Energy Information Locator System (FEILS). This gives FEA program offices data on 261 energy related programs in 44 Federal agencies.

d. Expanded the National Energy Information Center (NEIC) which contains thousands of reports and references to energy information for use by FEA, other Federal agencies, the Congress, and the public.

e. Assisted in the establishment of the Federal Interagency Council on Energy Information: (1) to assist Federal agencies involved in energy data-related activities with regard to coordination of data and information systems development and operations, and (2) to study and advise OMB and agency heads on policy issues and operations involving the collection, processing, analysis and dissemination of energy information and data by the Federal Government.

We are already soliciting a wide range of public comments on major, controversial forms before they are submitted to GAO. An example is our efforts in connection with the Petroleum Company Financial Report (P-324-A-0). In that instance, because we expected substantial numbers of comments on the form, we published a "Notice of Proposed Report" in the Federal Register, together with a copy of the report, and both held a public hearing and solicited written comments. FEA is currently assessing the need for this report in view of the comments received.

Another example was the distribution of the proposed revision of FEA Form 17 to all FEA Regions, State Energy Offices, 15 companies, and several industry associations. In addition, a proposed information gathering system to monitor domestic crude oil prices has been developed based on responses to over 100 letters to gathering system operators, 250 telegrams to pipeline companies and all refiners. Four alternatives were proposed in the Federal Register, and written and oral comments were solicited and received. The resulting system will minimize the reporting burden and provide in a single submission the data requirements in the areas of policy guidance, price monitoring and adjustment and detection of potential violators of the price regulations.

The proposed report discusses at length the apparent duplication among the various proposed oil and gas reserves surveys. FEA is planning a public meeting to discuss the problem of avoiding overlap, and is attempting to deal with the problem of possible duplication among surveys in developing an update of the FEA survey.

I hope that you will find these comments useful in your preparation of the final report. Please advise me if I can be of any further assistance.

Sincerely,

Frank G. Zarb
Administrator

LIST OF INDEPENDENT FEDERAL REGULATORY AGENCIES FOR WHICH GAO REVIEWS THE INFORMATION-GATHERING ACTIVITIES

Civil Aeronautics Board

Commodity Futures Trading Commission

Consumer Product Safety Commission

Equal Employment Opportunity Commission

Federal Communications Commission

Federal Energy Administration

Federal Maritime Commission

Federal Power Commission

Federal Trade Commission

Interstate Commerce Commission

National Labor Relations Board

Nuclear Regulatory Commission

Securities and Exchange Commission

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